JURISDICTIONAL STATEMENT

Statutory Provisions Believed to Sustain Jurisdiction

The jurisdiction of this Court is invoked under Judicial Code Section 240 amended, Title 28 U. S. C. A. Section 347 (a). Mar. 3, 1891, c. 517, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938.

Cases believed to sustain the jurisdiction of this Court are:

Forsyth vs. City of Hammond, 166 U. S. 506; 41 L. Ed. 1095.

In Re Church Building Company, 299 U. S. 24; 81 L. Ed. 16.

Date of Decree

The date of the decree of the United States Circuit Court of Appeals for the Ninth Circuit, which it is sought to have reviewed, is July 27, 1943. (R. p. 354).

Nature of the Case and Rulings of the Court

Morris Pearson and his wife loaned to the Merger Mines Corporation a total of 770,541 shares of stock, which were used by the Corporation to pay its indebtedness. This is shown by Exhibit F. (R. pp. 159 to 189 Inclusive). This stock was to be returned out of an increase of the capital stock of the Corporation, which was affected, citations having heretofore been made as to where these things are contained in the record. The million shares remained in the treasury.

Issuance was made impossible because the Corporation could not register with the Securities and Exchange Commission, and they were so advised by their counsel, their expert certified public accountant, and the Securities and Exchange Commission, and, therefore, refusal was had. (Citations heretofore made as to the record sustaining these things.) Action was commenced to compel the payment of these assessments, and it was contended by the plaintiffs that whether the stock could be issued or not, the assessments should be paid. The question then arises: First, was the individual who loaned the stock to the corporation, and which was accepted by the Corporation, liable for the assessments on that stock? Secondly, was he liable for assessments on stock remaining in the Corporation and which was not issued to him and could not be issued to him? The By-Laws of the corporation provide that stock in the treasury was not assessable and not enttled to dividends. (R. p. 307).

The ruling of the Court was that all of the stock was assessable. (R. p. 354).

Questions Presented

1. May a stockholder who has loaned his stock to the corporation for the purpose of preventing insolvency of said corporation and paying third party creditors' claims, which claims were actually paid from the loaned stock or the proceeds of said stock, be liable for subsequent assessments on the loaned stock where the corporation accepted delivery of the stock prior to the levying of subsequent assessments

here involved, and used the same for the purpose of liquidating corporate indebtedness to third party creditors, and where the one loaning had no dominion or control over the stock after delivery to the Corporation?

2. After the increase of the capital stock of the corporation in order to repay the loan, the increase all being in the treasury, is that stock in the treasury assessable prior to the issuance to the party to whom the stock was due, the by-laws providing that treasury stock is not assessable?

Reasons Relied on for Allowance of the Writ

In making the decision sought to be reviewed, the United States Circuit Court of Appeals for the Ninth Circuit has, we believe, "decided an important question of local law in conflict with applicable local decisions, and has decided an important question of general law in a way probably untenable or in conflict with the weight of authority."

For this reason it is respectfully prayed that this petition should be granted.

Respectfully submitted,

R. W. Nuzum,
Attorney for Petitioners, Morris Pearson and Ebba Pearson, his wife.

Wilmot W. Garvin,
Of Counsel for Petitioners, Morris Pearson and Ebba Pearson, his wife.

STATE OF WASHINGTON, }
County of Spokane } ss.

R. W. NUZUM, a member of the bar of the Supreme Court of the United States and one of the counsel for petitioners herein, does certify that the foregoing petition is well founded and not interposed for delay.

R. W. NUZUM.